IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9192 OF 2005.

Krishnarao Dnyanojirao Patil
(since deceased through LRs.)
Shri Jaysingrao Krishnarao Patil. ... Petitioner.
Versus.
ShriPrakash Ravaso Patil & others. ... Respondents.

Mrs.Manisha Shekhar for the Petitioner.

Shri A.A.Garge for the Respondents Nos.1 to 8.
Shri Umesh R.Mankapure for Respondent No.10.
Shri A.R.Patil, A.G.P. for Respondent No.11.

CORAM : ABHAY S.OKA, J.

DATED : 5th March, 2007.

P.C.:

1. Heard the learned Advocate for the Petitioner, learned Advocate for Respondents Nos.1 to 8, learned Advocate for Respondent No.10 and the learned A.G.P. for Respondent No.11.

2. Regular Civil Suit No.524 of 1976 was instituted by the predecessor of the Respondents Nos.1 to 8. The said suit was decreed and a decree for partition has been passed. It is not in dispute that as of today the decree has attained the finality.

3. On the basis of the decree, papers were sent to the Collector for effecting partition. The Tahsildar, Palus passed an order dated 14th February 2000 by which he directed that the partition of the suit property shall be effected in a particular manner. An Appeal was preferred against the said order by the Petitioner before the Sub-Divisional Officer. The said Appeal was

dismissed. The Second Appeal preferred by the Petitioner has been dismissed by the Additional Collector. A Revision Application was preferred before the Additional Commissioner which has been dismissed.

4. The learned Advocate for the Petitioner submitted that the First Appeal preferred by the Petitioner for challenging the order passed by the Tahsildar is not decided on merits and the same has been dismissed only on the basis of the interim order passed by this Court in one of the writ petitions. She pointed out that even the Second Appellate authority did not consider the merits of the Appeal. He submitted that even the Revisional Authority has not considered the submissions made on merits.

5. The learned Advocate for the 1st to 8th Respondents supported the impugned order by pointing out that no case is made out for interference as the decree for partition has attained finality long back.

6. I have considered the submissions. It appears that the decree for partition was passed exparte. The Petitioner preferred an appeal against the said decree along with an application for condonation of delay. The said application for condonation of delay was rejected by the District Court. Initially a Revision Application was filed by the Petitioner for challenging the said

order. As the Revision Application was rejected as not maintainable, the Petitioner preferred Writ Petition No.8298 of 2003 in this Court challenging the order passed by the District Court. In the said writ petition, Notice was issued to the Respondents and stay was granted. It is an admitted position that later on Writ Petition has been dismissed. A perusal of the order passed by the Sub-Divisional Officer in the First Appeal shows that only after perusing the stay order passed by this Court, he dismissed the Appeal without going into the merits of the case. The order passed by the second Appellate Authority records that Petitioner did not produce a copy of the stay order passed by this Court. Without considering the merits of the Appeal, the second Appeal has been dismissed. The Revisional Authority has also not considered the merits of the case on the ground that the Advocate for the Petitioner himself pointed out that the writ petition was pending in this Court.

7. It is not in dispute that the right of preferring two appeals and a revision was available to the Petitioner. Neither the Appellate Authority nor the Revisional Authority have considered the challenge made by the Petitioner to the order of Tahsildar on merits. Therefore, the orders passed by the Appellant Authorities as well as the Revisional Authority will have to be set aside and the Appeal preferred by the

Petitioner will have to heard afresh on merits.

8. Hence the Writ Petition is disposed of by the following order:

i) The impugned orders at Exhs.B, C and D are quashed and set aside and the Appeal No.31 of 2000 is restored to file of the learned Sub-Divisional Officer, Khanapur Sub-Division at Vita, District Sangli.

ii) The learned Sub-Divisional Officer is directed to decide the Appeal preferred by the Petitioner on its own merits by passing a speaking order. The Appeal shall be decided as expeditiously as possible and preferably before end of July 2007. Till the Appeal is disposed of, effect should not be given to the order passed by the Tahsildar which is the subject matter of the Appeal.

iii) All contentions of the parties on merits are expressly kept open.

iv) Parties to act on an authenticated copy of this order.

Judge.